



# Idaho's Citizen Commission for Reapportionment

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Capitol Building  
700 W. Jefferson Street  
Boise, ID 83720-0054

Phone: (208) 334-4740  
E-mail: [redistricting@redistricting.idaho.gov](mailto:redistricting@redistricting.idaho.gov)  
Web site: [www.redistricting.idaho.gov](http://www.redistricting.idaho.gov)

Public Meeting  
July 25, 2011  
Capitol Auditorium, Capitol Building  
10:00 a.m.

Present were: **Commissioner Esposito, Commissioner Finman, Commissioner Frasure, Commissioner Andersen, Commissioner Kane, and Commissioner Moses.** Present from the staff were **Ms. Kristin Ford, Mr. Keith Bybee, Mr. Todd Cutler, and Cyd Gaudet.** Also present from the Attorney General's office was **Mr. Brian Kane.**

**Chairman Frasure** called the meeting to order. He indicated that as he took a look at the agenda it looks the same, and noted that it will probably continue to look the same, unless he and **Commissioner Andersen** came to some different conclusions. He indicated that it did seem to fulfill their purposes with consideration of both plans. He stated that he had just spoken with the staff and that it looked like they were close to being able to clear up the minutes within the week. Additionally they should have the budget reports by Wednesday. He then went on to the calendar, which the staff had prepared, and asked if there were any modifications or concerns with the dates in August. He also asked that the staff prepare a calendar for September 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, and 4<sup>th</sup>.

**Commissioner Kane** indicated that on August 26<sup>th</sup> she will not be able to make that meeting. She said that just in case, she wanted to give them a heads up, and suggested that day could possibly be a caucus day, or they could have a meeting and agree not to vote. She indicated that she can be back for the meeting on the 27<sup>th</sup>. **Commissioner Esposito** indicated that in the spirit of how they had been conducting business that they could designate the 26<sup>th</sup> as a caucus day, and accommodate **Commissioner Kane.** **Chairman Frasure** asked if this was in the form of a motion or just as a general agreement. **Commissioner Esposito** indicated that he could make that in the form of a motion. **Chairman Frasure** indicated that in his opinion they did not have enough meetings, as they start closing in on this. He stated that they did quite well with the public hearing process. He indicated that as plans are developed they are getting a lot more public input, and with the glacial pace that they are on in making decisions, he is not sure that they have enough meetings. He noted that with a full week off starting August 8<sup>th</sup>, and with only going thru Wednesday the next week, that he would have no objection in going all the way through Saturday this week, and then virtually every day until they came to a conclusion. He then asked if there were any further dates that the commission would like to add to the calendar, instead of taking away from the calendar. **Commissioner Moses** indicated that he was fine with meeting all this week and all the next week. **Commissioner Kane** indicated that she understood the need to do this; however, she would have to check with her employer. **Commissioner Esposito** added that he would also need to take a closer look at his calendar. **Chairman Frasure** then asked the commission to look to see if there were any more days that they could add to the calendar. He also stated that August 26<sup>th</sup> was an awkward day just to caucus, however he thought that they could accommodate that. He said from his side of the aisle they had pushed hard for a rule that they would not take a finalized vote on any plan unless all six commissioners were present; however, that motion was defeated, so he supposed, if needed, they could still meet on the 26<sup>th</sup>, and that this would be his only caution. **Commissioner Moses** indicated that **Commissioner Kane** was courteous in warning them in advance, and that they may not need to decide this at this moment, and that maybe as they get closer to it they could more accurately decide how to deal with it. There was then a conversation regarding making a substitute motion and it was pointed out that they could have up to three motions on the table at any given time. **Commissioner Esposito** then indicated that he would have no problem with withdrawing his motion. **Chairman Frasure** then indicated that the motion to have August 26<sup>th</sup> as a caucus day had been withdrawn. He then asked that the commission check their schedules for any additional days to add to the calendar, by Wednesday. He noted that then on Wednesday they could firm up their August

and September schedule. He then asked that the staff go ahead and put September on the calendar and schedule the dates of September 1, 2, 3, and 4<sup>th</sup>.

**Chairman Frasure** then indicated that they were back to the main agenda items which were review of congressional plans and possible consideration of legislative plans. He indicated that they could have discussion in either direction, as he certainly honored the ruling from the chair, so both topics were before them simultaneously. **Commissioner Esposito** stated that he had planned on presenting an analysis of the plan from the Democratic commissioners; however, due to a schedule change, he was not fully prepared at this time. He said that he could be ready that afternoon, and suggested that if they could recess until 1:30 or 2:00 that would be helpful.

As there was no objection, **Chairman Frasure** called a recess until 2:00 p.m.

**Chairman Frasure** called the commission back to order from recess at 2:00 p.m.

**Commissioner Esposito** then asked about a couple of housekeeping items. He said that he has been receiving emails regarding the legislative districts and asked if these would be part of their public record, and if they are continuing to take public testimony. He specifically noted an inquiry from one of the Power County Commissioners who wanted to come over and testify before the commission. He wanted to know if the commission will take public testimony. He also wanted to know what parliamentary rules they are operating under, either Mason's or Robert's. **Chairman Frasure** indicated that they would certainly welcome the public comments on the plans and didn't think that there would be any objection to that from the commissioners. He said that, as far as a parliamentary inquiry, the chair would rule that obviously they are still taking public testimony, and if a witness came over, and they wanted to call them to the podium, they would certainly have the latitude to do that. **Commissioner Andersen** then asked **Commissioner Esposito** if the emails he was receiving were sent to the entire commission. **Commissioner Esposito** indicated that they had been coming into their legislative email address, so if they had not been copied to everyone, he would make sure that they were. He also asked that if any of the other commissioners had received any emails he would appreciate seeing those. **Commissioner Andersen** indicated that he believed that all of the emails they have received have been directed to all of the commissioners, so he would assume that they are part of the public record. **Chairman Frasure** then made a ruling from the chair that they are a part of the record. He said that the second part of that ruling then is that they are still taking public testimony, and if someone comes in, and any commissioner wants to call them up, it would be within their rights to call them up to the podium.

**Commissioner Moses** indicated that he was a little surprised by the request since they had a period of public testimony, and it was open in all parts of the State. He said his concern was the time that they had left, and the work which they had to do. He stated that their schedule was initially put out to bring discipline to their process, and that there was a period of time for public testimony, which had now passed, and now they needed to start working on, and considering maps. He said that if they leave this open for public testimony for the whole 90 day period, that he despairs that they will ever get done. He indicated that they can certainly take written comments at any time, that they have written comments from Power County, and if they allow them to come and testify in person, then they would not be able to say no to anybody else, and that would hamper their process. **Chairman Frasure** indicated that **Commissioner Moses** is more than welcome to challenge the chair. **Commissioner Moses** indicated that he was not looking to do that, he was just looking to bring some discipline to their process. **Chairman Frasure** then stated that the ruling will stand, unless someone had a motion to defeat the ruling, and that the ruling is that they are still open for public testimony. He said that at the discretion of the chair, if people come to testify, that any commissioner can call them to the podium to clarify their written testimony. He said the purpose is to give them an opportunity to comment on these plans, and that is the reason that they have left it open for written comment. He indicated that it is still a very public process and they do want the public input, oral or verbal. Therefore, he said that it is the ruling of the chair that they are still in a public gathering mode and they will be until the day they adjourn.

**Commissioner Andersen** then asked how he envisioned this process to work, is it by invitation of any commissioner that they would appear? He also asked if any commissioner invited a group or individual, would that individual or group then have the expectation of testifying before the commission, and would the commission then have the obligation to hear that individual? **Chairman Frasure** indicated that up to this stage the public had nothing to comment on, and now they have plans that are seriously being considered by the commission. He said that throughout their record the public has been invited to comment on those plans, in a written manner. He stated that all he is doing is continuing that policy, which they have already adopted. He said that if he has a county commissioner who drives all the way up from Power or Lemhi County, and they are sitting in the audience, and have just spent seven hours getting here, then he wants to hear their comments and wants it on the public record. **Commissioner Andersen** then said that he feared that if they have invited a speaker, then someone will have to invite a rebuttal speaker, and he sees them re-hashing the public input for a long period of time, if they don't have an understanding of how this process will work.

**Commissioner Esposito** then explained that the reason he brought the Power County request to the commission was because they have a material change to their prior testimony. He said that in seeing their changed written testimony, he thought it would be helpful to know the

reason why they wanted the change. He said that while the letter was clear, they may have missed some of the nuance, so he thought that this was where it was helpful. His view is, if they have a person or group that could shed some additional light on a plan or a particular area, especially if they have changed their position, then he would like to be able to say yes, come over, we would like to hear from you. He indicated that if there was need for a counterpoint, then if someone with a counter argument wants to come over, at the same time, and present the other side of it, that he doesn't see where this would hurt. He said that he was not suggesting that they open themselves up for a full blown public hearing on the plan at this time; however, they may want public input on the plans later. **Commissioner Moses** said that he wanted to be clear on what he thought was happening, his initial impression was that they were going to reopen, and that anyone who wanted to publicly testify could. Now he said he thought he was hearing that they were not going to be open to everyone, just individuals selected by one or more commissioners, and that others are not, and he wanted to know which it is.

**Chairman Frasure** stated that this is a very public process, and that they have made it clear from day one that they invite public discourse and comment. He said that the public is invited to testify and submit plans. He indicated that they have kind of handicapped the public by gathering their input, and now they are beginning to produce plans. He suggested that if the plans don't conform to what that public input is, or, as in the case of Power County, where they are changing their position, they clearly they have an opportunity. He said that this is going to impact those counties for the next ten years, and now Power County has seen that there is a plan on the table, and they have reacted, and he has no problem at all spending a few minutes with them. He stated that he does not think that they will be overwhelmed, and that even with the public testimony that they have had so far, they have not been in overwhelming numbers, as they only had one situation where it went to the full two hours. He said that now where they are actually getting to the point of passage of these lines, with the commission now putting forth plans; he doesn't see where it makes logical sense to say no, they are going to oppose that. He said there isn't that overwhelming of a public response. He indicated that the county commissioners take interest in this because they have to respond to what the commission is doing. He stated that there may also be some individuals who want to testify, and if they want to testify for a reason, he does not think that the commission should cut them off and say they are not accepting public input. He noted that they are already accepting input in written form, so he has no problem accepting it orally to speed up the process. He said he would love to hear more explanation on the fact why Power said they didn't want to be tied to Pocatello and now they want to be tied to Cassia County.

**Commissioner Andersen** indicated that he appreciates the explanation of having the open process; however, he was concerned that once they start opening that door, that they go down that slippery slope, and are going to be overwhelmed by requests to come in to comment on the plans that are being discussed, without finalizing any position at any given time. He said that he would ask, that if this is going to be the case, that all of the commissioners be informed as to who has requested to come in, and who is going to be invited in, so they have an understanding of what to expect when these people come in. He also requested that they leave the door open to any rebuttal testimony that may come in from people who might not agree with what has been presented.

**Chairman Frasure** indicated that this is not like a debate, that they are inviting public comment on the lines that they have drawn. He said that in the proposal in L#28 they have some districts that have not been put on paper before, and that create whole new vistas for comment. He knows that he didn't envision some of these unwieldy districts, and the public certainly has a right to comment on them. He stated that if someone shows up here, and has driven halfway across state, and wants to testify, he has no objection for them to be called to stand and testify. **Commissioner Moses** then said that he does not want to belabor this, because they all know where this is going; however, they did publish an order for the committee to proceed early on. He stated that they had a period of live public testimony, and that was published, and it was passed. He said that it was always understood that they would be open to written comment at any time, and it seemed to him that now they are creating a favored class of Idahoans who get to come before them while others may not. He indicated that they are creating a standard that leaves them open to having witnesses testify literally up to the last day. He said he wanted to go on the record as saying that if prolonging the proceedings is something that they care about, then they might want to take a second look at this, and that he really has a problem in creating a favored class of people that can testify and those that can't.

**Commissioner Esposito** suggested that there is a solution here, that just as Power County sent them a letter and made a request; he would say that anyone who submits written testimony, that they believe needs further clarification, then that would be the standard. So then any written testimony would be the first step, and if it needed clarification the commission could ask them to come in, or if they wanted to come in and clarify, they could make that decision based on the written testimony, as to whether it warranted further testimony.

**Chairman Frasure** then indicated that the chair is making a ruling that it is still an open process, and that they will accept testimony from the public, and that they would welcome more public testimony as these plans become public. As there was no objection, that was the ruling from the chair. He then noted, in response to Commissioner Moses' comments regarding a privileged class, that there was none whatsoever, and that any soul that feels that they want to contact the commission, and have input on this process, they would be welcome to come in and testify. He stated that the only privileged class they have is all of the citizens of Idaho.

**Chairman Frasure** then moved on to **Commissioner Esposito's** request for clarification on which procedural manual that the commission was using. He indicated that they had been using Mason's manual as a guideline since day one, and that Mason's was referred to in their minutes, and the chair would rule that they are following Mason's Manual. **Commissioner Andersen** objected as they had also referred to Robert's Rules of Order, and he thought that would be more appropriate to this body. He said that when you look at Mason's Manual it says

it is for legislative procedures, and he didn't know that this is a legislative procedure. He said that he understands that this is a body that was established through the legislative procedure; however, he is not sure that the manual directly applies to the process they are going through. He stated that he would prefer to use the Robert's Rules of Order, because it is a more general process, and not restricted to legislative action. **Commissioner Moses** then agreed with **Commissioner Andersen**, that if you look up Mason's Manual from its source, it is written specifically for state legislatures, and intended for that use. He stated that they are not a legislature, that they are an independent commission. He said that he has been operating under the principles of Robert's and it seems just fine, and that it is inappropriate and irregular for them to use a legislative manual for a citizen's independent commission.

**Chairman Frasure** then said that the ruling from the chair was that they already had been using Mason's, that he found no reference to using Robert's in listening to the complete tapes, and they have in fact referenced Mason's on numerous occasions. He also said that he had been following Mason's while he was in the chair. He stated that there has been no indication that they have been following Robert's rules until **Commissioner Andersen** just brought it up. He said that the commission was created by the legislature, and they have two co-chairs who are experienced in using Mason's, and it is pretty fuzzy if one day you are using Mason's and then using Robert's the next day. He said it is simply a guideline to know that they are all playing from the same rules, so the ruling is that they will proceed with using Mason's.

**Commissioner Moses** then objected. He indicated that while **Chairman Frasure** made the point that the co-chairs have operated under Mason's, the rest had not, and that confers an advantage on them, that the rest of the commission does not have. Beyond that, he reiterated, it is inappropriate for an independent commission, created by the constitution, to use a manual created for state legislatures.

**Commissioner Andersen** stated that he objected to the ruling. **Chairman Frasure** then advised that there was an objection to the ruling and asked if there was any discussion. **Commissioner Andersen** stated that he believed it has been discussed. **Chairman Frasure** then called for a vote on the objection. The motion was defeated, as less than a majority voted to uphold the objection, with **Commissioner Moses, Commissioner Kane, and Commissioner Andersen** voting yes and **Commissioner Esposito, Commissioner Finman and Commissioner Frasure** voting no. With that, the ruling stood that the commission would be using Mason's Manual.

**Commissioner Esposito** then stated that he would like a ruling that they will continue to follow a daily rotation of the gavel, and that it would take a unanimous vote to deviate from that. **Chairman Frasure** then clarified whether Commissioner Esposito was asking for a ruling concerning the standard practice where they had been rotating the gavel daily and had been adjourning the meeting, and then the next day the other co-chair would have the gavel. He said that he had no objection to this, that this had worked for them, and that each side has been treated fairly. He stated that he would agree as long as there were no maneuvers to go at recess, and not adjourn, to have the same chairman the following day. He noted that they only had one exception where they had gone to recess, and that was by unanimous vote, and that he would support that concept. As there were no comments or discussion, **Chairman Frasure** explained that they have the ability to establish rules, which would override even Mason's Manual. He said in light of that, to prevent one side from seizing the gavel by going to recess, he would rule that they adjourn daily, and that the gavel changes hands as they have practiced throughout the process. As there was no objection, he ruled that they will adjourn daily so that each side is treated equally, and has equal opportunity to handle the chair.

**Chairman Frasure** then said with the committee's permission, they would then shift back to their deliberations, and that considering the other chair's ruling, that both the congressional and legislative plans can be considered at this time.

**Commissioner Esposito** then explained that after having a conversation subsequent to the morning's session, that he will keep his comments brief this afternoon, and walk through L #28 as quickly as possible. He said that when they started this process, they were very clear about the rules and guidelines that have governed the process, and what they would need to do to put maps together, and that they had gone through a list of criteria that they were to follow. He indicated that he was going to keep his comments to those general areas. He directed the commission to the area between Kootenai County, Boundary County and the section of Bonner County that ties to Shoshone, and indicted that he had a couple of quick comments about that. He said that there is no connecting road between that part of Bonner County and Shoshone. He also noted that this area also forms the top part of what the last commission put together that was called the "C". He would argue that if you looked back out from Idaho County to the north that they ended up with a somewhat larger "C" as a result. He pointed that they did hear quite a bit of public testimony about how unworkable that was.

He then indicated that as you go down and look at Shoshone County, there is no connecting road between Shoshone County and Clearwater County. He indicated that again when you go from Clearwater County to Idaho County, you have the same kind of road problem. He said that another thing that peaked his curiosity was the reference to the number of school districts and how all that shaped up for the entire state. He stated that we have 115 school districts in Idaho, and that if he was not mistaken, they ended up with 212 splits with these districts, so it was a valiant effort to keep school districts together but they ended up with 97 splits among districts. He granted that part of

those were areas where there are multiple legislative districts in a given county. He said that further made him curious so he asked himself how many individual taxing districts are there in the State of Idaho, and the answer that came back was that there are approximately 6500 different taxing districts. When he heard that number his sympathies immediately went out to all of the county clerks as most of them have elections at one time or another. He said that the whole taxing district issue is somewhat problematical. He then moved down through the Idaho, Clearwater, Shoshone, Bonner area, which is by far, one of the larger legislative districts and an incredible amount of driving for representatives to cover a lot of territory. He pointed out they would be on roads that mostly have to go out of the district to get back into

other parts of the district. He said that they know that after the last commission's work, that the legislature was very specific in passing legislation about having connecting roads. He then went over to eastern Idaho, and said that once again they have the infamous District 31. He said that they had lots of testimony, from the hearings about the dislike for District 31, and he thought that this was the catalyst for the legislative action on roads. He noted that they had lots of testimony on communities of interest, and working agreements between counties, that unfortunately were not followed, and they were again looking at a somewhat oddly-shaped district. He said he realized that just by the shape of Idaho, and the shape and nature of the counties that it is difficult; however, some of these districts are somewhat of a stretch. He also said that they have the Lemhi and Custer issue over Hwy 21 to Boise County and to Elmore County, which is a connecting road, and is a state highway; however, it is also avalanche alley, and closed during the better part of the winter, which happens to coincide with the legislative session. He then addressed the Ada and Canyon County area. He said that he looked at this and thought there were some interesting lines. He said that they have had lots of discussion within the commission, especially over congressional lines, regarding easily followed boundaries. He noted that one really struck him as curious, in that District 21 looks like a fish with a hook in its mouth, or smoking a pipe. He said that he thinks there are some basic problems with how some of these districts line up.

**Commissioner Esposito** stated that in having gone through this quicker than he intended, he thinks that the best way to analyze this map, was to produce their own. He said that he is working as quickly as possible to put a legislative map together. He indicated that he would like to have it on the table by Wednesday, and no later than next Monday, to have something to talk back and forth about. He said that he thinks that is in the best interest of commission, and the citizens of the State, to have at least two maps to look at. He is hoping they will be able to spend some time the following day looking at the maps that the public has submitted, and to go through those and then move on with the process. He stated that while they might not meet the July 27<sup>th</sup> date, that maybe August 3<sup>rd</sup> won't be such a bad date after all.

**Chairman Frasure** then asked if there were any other comments on L28, or any answers to the comments which **Commissioner Esposito** had laid out. **Commissioner Moses** then said he wanted to address the initial observation which **Commissioner Esposito** made about the statute regarding roads. He said that they had done some studying on that, and that he had a map, which he passed out to the other commissioners, which shows that the number of county borders, which are not directly crossed by a state or federal Highway, is 22. He said that it is neither their role, nor his intention, to debate the merits of the legislation; however, they do have to live with its effects, so it is worthwhile to look at it. He stated that if you are looking for a statute that contributed to the Balkanization of Idaho, this would certainly be way up on his list. He said that these are borders of counties that you cannot join if you follow that statute, and that you still have to keep counties whole as much as you can. He then said that to give a better sense of the problem that they will encounter in drawing their own map, he created another graphic of the parts of Idaho that cannot be joined into districts because of that statute. He explained that these counties are not available to join through the red borders, and yet they must keep counties whole. He stated that there are 24 counties directly affected by these borders. He suggested that as they know from trying to draw these maps, that every one of them has ripple effects, so every county in the State will be affected. He said that this is over half the land mass of Idaho. He stated that they discovered, as they went to draw their map, being mindful of the statute, that you can't do both. He said that this statute will require that you divide counties in order to comply with it, and that is, on its face, unconstitutional. He stated that you cannot amend the constitution with a statute, and as well intended as the statute might be, it is mischievous and makes it impossible to comply with the constitutional directive that counties must be kept whole. He indicated that while he appreciates the good intentions, that the statute is fatally flawed and he believes that they will find that they have to override it, if it is their intention to keep counties whole. He said that this is what they did, and they did it not particularly desiring to go after a statute; however, this one simply made it impossible to carry out their constitutional duties.

**Commissioner Esposito** said that they were well aware of the adage about roads and good intentions. However, he believes that they can actually accomplish the task put before them, with a minimum number of county splits. He suggested that maybe not six splits (depending on how you define whether it is a split or a borrow, as maybe they will need to borrow a bunch of precincts or whatever makes this work). He said that he believes that they can keep communities of interest together. There is no doubt that they will end up with a number of additional county splits, but he believes that they will end up with a much better plan for all of the citizens, and for the good people of Bonner, Shoshone, Clearwater, Idaho and Caribou Counties. He said that they have had lots of compelling testimony from around the state, and he thinks that it is premature at this point to make a claim as to how a court would rule. He said he was sure that he and **Commissioner Moses** could have a very spirited debate about what that court ruling would look like, but he didn't think it would serve their purpose to pursue that at this point. He indicated that he appreciates the map, that he has something similar, and as they put the maps together they will definitely keep these in mind.

**Chairman Frasure** then noted that they were amused by the language on the first page of the plan that said that it “extracts” one precinct from Teton County, so they divided five counties and had one “extraction.” He pointed out that the criticism is that their plan certainly ignores that one statute very clearly. He then asked **Mr. Kane**, who was in the audience, if he was correct that all laws are presumed constitutional until a court of competent jurisdiction rules otherwise. **Mr. Kane** then nodded in the affirmative. **Chairman Frasure** stated that it was interesting that they have decided that they are that court of competent jurisdiction, so they are going to overturn the statute and ignore them, because in their humble opinion they think that the statute is incorrect. He said that to his knowledge there had been no

court ruling, so their legal obligation is to follow the statutes as written. He stated that while they may have the opinion that one day may be overturned, it is still their requirement to follow all of the statutes. **Commissioner Moses** then indicated that they have a superior obligation to follow the constitution, and that comes first. He said that if they have to go to some effort to defend the Constitution, and the way that it protects us, then he believes that is a worthy effort. **Chairman Frasure** then clarified that he is not attacking the Idaho Constitution. He said Commissioner **Moses** has an opinion that he thinks may somehow have a constitutional ramification, and that this is just his opinion. However, he stated that their statutory requirements is to follow all of the laws of Idaho, both constitutional and statutory, and the statutory structure is very clear that a law is deemed constitutional unless a court of competent jurisdiction rules otherwise. So, he said, the fact is that they must follow the Constitution, which they both want to defend, and they also both have to defend the statute, until a court of competent jurisdiction rules it unconstitutional.

**Commissioner Esposito** then stated that he would like to get back to work and if they could call it a day he would appreciate that. **Chairman Frasure** then put the commission at ease for 5 minutes.

**Chairman Frasure** then called the commission back and indicated that there had been a question from the staff about the agenda. He said that they had given themselves until Wednesday to determine the calendar for the rest of the week; however, if they decided to meet on Thursday, that would run into the 48 hour rule. He said then, without objection, they will wrap up their business by Wednesday of this week, and then that gives them the chance to talk about any adjustments in their meeting schedule for the following weeks. As far as the agenda, he said that they can have a standing agenda, and when the staff is ready with minutes and budget, they can handle that. He said that at any time they may surprise the world and approve legislative and congressional plan in the same day. As there was no further business, the commission adjourned until 10:00 a.m. the following day.